

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No. 08-V-14138-PEM
)	
JOHNNIE S. HARRISON, JR.,)	DECISION
)	
Member No. 64179,)	
)	
A Member of the State Bar.)	
)	

I. Introduction

The issue in this case is whether petitioner Johnnie S. Harrison, Jr., has established his rehabilitation, present fitness to practice, and present learning and ability in the general law so that he may be relieved from his actual suspension from the practice of law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)¹

The court finds that petitioner has shown by a preponderance of the evidence that he has satisfied the requirements of standard 1.4(c)(ii) and therefore, finds that his actual suspension should be terminated. Accordingly, the court **GRANTS** petitioner's petition for relief from actual suspension from the practice of law.

I. Significant Procedural History

This is petitioner's second petition for relief from actual suspension.

¹All further references to standards are to this source.

On December 27, 2006, petitioner filed a verified petition for relief from actual suspension. On May 25, 2007, the court denied his petition on the grounds that petitioner failed to establish by a preponderance of the evidence his rehabilitation, present fitness to practice law, and present learning and ability in the law.

In this proceeding, on October 28, 2008, petitioner filed his second verified petition for relief from actual suspension, seeking the termination of his actual suspension and claiming he has satisfied the requirements of standard 1.4(c)(ii).

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) opposed petitioner's request for relief of actual suspension on the grounds that petitioner has not shown his rehabilitation and present fitness to practice law, nor shown that he has present learning and ability in the law.

Trial was held on February 10 and March 5, 2009. Petitioner represented himself. Deputy Trial Counsel Wonder J. Liang appeared for the State Bar. The court took the petition under submission on March 5, 2009.

III. Findings of Fact

The following findings of fact are based on the evidence and testimony introduced at this proceeding, the December 27, 2006 petition, the October 28, 2008 petition, and the court's May 25, 2007 decision, and on the parties' Feb 10, 2009 stipulation of facts, which were admitted into evidence. The court finds petitioner to be a credible witness.

Petitioner was admitted to the practice of law in California on July 1, 1975, and has been a member of the State Bar since that time.

A. Petitioner's Underlying Disciplinary Background

In 2004, the underlying matter, petitioner stipulated to misconduct that involved failing to perform services competently in two client matters and misappropriating almost \$49,500 of client funds. (Supreme Court case No. S124654, effective August 21, 2004; State Bar Court case Nos. 00-O-12703 and 02-O-15151.)

In one client matter, petitioner received \$85,000 in settlement funds and deposited the funds in his client trust account. Within eight months, petitioner misappropriated \$49,484.24 to his own benefit. (Bus. & Prof. Code, § 6106.) He also failed to promptly pay the medical providers, withholding funds for about a year or more. (Rules Prof. Conduct, rule 3-110(A).)

In the second client matter, petitioner stipulated to failing to file a personal injury claim and incorrectly advising the client that the statute of limitations had not expired when in fact, the deadline had passed. (Rules Prof. Conduct, rule 3-110(A).)

In mitigation, the parties stipulated to the following factors: (1) petitioner had no prior record of discipline over many years of practice; (2) petitioner displayed spontaneous candor and cooperation to the victims of his misconduct and to the State Bar during the investigation and proceedings; (3) petitioner promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his misconduct; (4) petitioner paid full restitution; (5) at the time of petitioner's misconduct, petitioner suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his control; (6) at the time of the misconduct, petitioner suffered extreme difficulties in his personal life; and (7) petitioner had done extensive community service and pro bono work.

In aggravation, petitioner committed trust violations and multiple acts of wrongdoing.

As for discipline, it was stipulated that petitioner should be suspended for three years, that execution of the suspension be stayed and that he be placed on probation for three years on conditions, including that he be actually suspended for 18 months and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii). With minor modifications, the stipulation was approved by the State Bar Court hearing judge. On July 22, 2004, the Supreme Court filed an order in case number S124654 in which it imposed the stipulated discipline on petitioner. Petitioner's 18 months actual suspension under that order began on August 21, 2004. Petitioner's three years of probation remained in effect until August 21, 2007.

B. Petitioner's Rehabilitation and Present Fitness to Practice Law

The State Bar argues that petitioner has not been rehabilitated and does not have present fitness to practice law. The court disagrees.

The court finds by a by a preponderance of the evidence that petitioner has demonstrated the rehabilitation and present fitness to practice law, and so meets the requirements of this portion of standard 1.4(c)(ii).

1. Petitioner's Compliance With Probation Conditions

a. Petitioner's Failure To Comply With Probation Conditions In The Prior Proceeding

Pursuant to the Supreme Court order in S124654 (State Bar Court case Nos. 00-O-12703 and 02-O-15151), effective August 21, 2004, petitioner was suspended for three years, execution stayed, and placed on probation for three years on conditions, including that he be actually suspended for 18 months and until he satisfies standard 1.4(c)(ii). Thus, the period of petitioner's probation was from August 21, 2004 to August 21, 2007. The other terms and conditions of petitioner's three year probation included quarterly reports, State Bar Ethics School, and Client Trust Accounting School. Pursuant to Supreme Court Order in S124654, petitioner was also required to file an affidavit under California Rules of Court, rule 955,² by September 30, 2004, and take and pass the Multistate Professional Responsibility Exam (MPRE) during his actual suspension. By the time petitioner filed his verified petition for relief in December 27, 2006, he had complied with the State Bar Ethics School requirement (completed on September 8, 2005) and the Client Trust Accounting School requirement (completed on September 9, 2005). He had taken and passed the MPRE in November 2005. Petitioner, however, had failed to strictly comply with the Supreme Court's disciplinary order in that he did not timely file the rule 955 affidavit and the quarterly reports required under the Rules of Professional Conduct and the State Bar Act.

²References to rule 955 are to former California Rules of Court, rule 955 (currently renumbered to rule 9.20, effective January 1, 2007).

In its May 25, 2007 decision, the court found that petitioner filed his 955 affidavit one day late and that the late filing was inexcusable when coupled with the late filing of five quarterly reports.³

b. Petitioner's Compliance With Probation Conditions In The Instant Proceeding

Subsequent to the five late quarterly reports, petitioner timely filed his April and July 2007 quarterly reports. Petitioner's State Bar probation ended on August 21, 2007. Thus, the court finds that since the May 2007 proceeding petitioner has timely complied with his probation conditions.

2. *Petitioner's Community Work*

Petitioner has made significant contributions to the community through his public service work. His duties as a deacon in his church consist of calling on the sick and attending bible class three times a week, including an interdenominational class. He also teaches a Sunday bible class for adults. Additionally, he sits on the Board of Directors of the Allen Temple Housing and Economic Development Corporation, the Allen Temple Development Corporation #2, Allen Temple Arms III and IV. These five corporations serve the elderly and disabled with housing and provide re-entry services to ex-offenders.

3. *Petitioner's Acceptance of Responsibility and Remorse*

As noted on page 3 of the court's May 25, 2007 decision, the parties had stipulated to the fact that "petitioner promptly took objective steps spontaneously demonstrating remorse and recognition for his wrongdoing." Since the filing of that decision in 2007, petitioner has reviewed the record and taken to heart the court's concerns regarding his failure to comply with deadlines. Petitioner testified that he now meets deadlines in both his professional and personal life and takes them seriously. Petitioner has timely executed his duties as secretary to the board of directors of the non-profit boards on which he sits. He sends out minutes in a timely manner,

³The issue of the late filing of the five quarterly reports was considered by the court in its 2007 decision. Since those quarterly reports were already late, the fact that petitioner waited until after the filing of the May 25, 2007 decision to provide the original of the October 10, 2006 report, which report had been provided to the Office of Probation by facsimile on November 6, 2006, is not of concern in this decision.

timely provides information to funders for various grants, and timely attends meetings of the inmate recovery program with which he works. He also timely executes various checks to vendors that require his signature. Additionally, he timely prepares and sends quarterly and annual reports for the non-profit corporations with which he works and timely meets requirements relating to his teaching of business law.

As discussed *ante*, petitioner has timely complied with his probation conditions since the filing of the court's May 25, 2007 decision.

Thus, through his commitment to meet deadlines in all aspects of his life, including strict compliance with probation conditions, petitioner has demonstrated remorsefulness for his previous failure to meet deadlines and timely comply with his probation conditions.

4. Petitioner's Character References

In support of his petition, petitioner submitted nine favorable reference letters from three judges, four attorneys, a pastor, and a friend (Judge Carl Morris, Judge Gordon S. Baranco, Judge Marshall Whitley, Rosario Bacon Billingsley, Esq., Stephanie R. Bolden, Esq., Theodore Johnson, Esq., Donald Amamgbo, Esq., Dr. J. Alfred Smith, Sr., and Reginald W. Lyles.) (Exh. B) Many of those who wrote character references have known petitioner for at least 15 years; one has known him for more than 35 years. They all believed petitioner to be rehabilitated and found him to be of good moral character. Many spoke of his deep remorse. They were aware of the full extent of petitioner's past misconduct and suspension from the practice of law. The State Bar did not rebut any of the evidence submitted.

Dr. J. Alfred Smith, who testified before the court in this proceeding, has personal knowledge of petitioner's efforts to help the needy since the denial of his first petition. All of those who wrote believe that petitioner possesses principles of honesty, fairness, and compassion. They all believe him to be dedicated to the issues of social justice. He has done extensive community work helping youths, seniors, the poor, and those recently released from prison.

Judge Whitley, who has known petitioner for 23 years, believes that petitioner's "suspension has helped him turn the corner and he is ready to resume his personal and

professional life, functioning at the high level he always did before this. He has expressed deep remorse and taken full responsibility for his bad judgment and wrongdoing.”

Judge Morris, who has known petitioner for 30 years, states that petitioner is an honorable man, who made mistakes that are unlikely to recur, in view of petitioner’s remorse and his increased activities as a deacon.

Judge Baranco states that he is confident that petitioner’s underlying misconduct was aberrational. Judge Baranco writes that since the time of petitioner’s misconduct, he has received financial counseling and notes that petitioner “has remained steadfast in the proper handling of funds of others at Allen Temple Baptist church where he serves as a deacon.”

Attorney Stephanie Bolden writes that that she believes that petitioner “has always been remorseful and continues to be remorseful.” She goes on to state that petitioner “has superior knowledge and a commitment to justice that can and will benefit the public. I believe [petitioner] should be allowed to return to the practice of law.” Similarly, attorney Theodore Johnson writes that petitioner “has demonstrated the kind of remorse that would prevent him from ever doing. . . wrongful acts in the future.”

In the previous proceeding, the court found that many of those who wrote references on petitioner’s behalf and supported his return to the practice of law were not fully aware of his misconduct or why he was suspended from the practice of law. However, in this proceeding, those who submitted character references indicated that they were fully aware of the scope and extent of petitioner’s past misconduct and the prior 2007 proceeding. All of the lawyers and judges, whose letters are in evidence, strongly support petitioner’s return to the practice of law. They are fully aware of petitioner’s misconduct, understand why he was suspended from the practice of law, and why this court denied his first petition.

In summary, all of the letters, comprising exhibit B, strongly recommend petitioner’s reinstatement to the practice of law. Accordingly, in this proceeding, petitioner has shown that his favorable character testimony and reference letters from attorneys, judges, friends and his pastor are entitled to considerable weight. (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.)

The court finds the favorable character evidence to be of sufficient value to support petitioner's rehabilitation and present fitness.

C. Petitioner's Present Learning and Ability in the General Law

In November 2005, prior to filing his first verified petition for relief from actual suspension, petitioner took and passed the Multistate Professional Responsibility Examination. Petitioner also completed the State Bar Ethics School on September 8, 2005 and Client Trust Accounting School on September 9, 2005.

Since that time, petitioner has taken two real estate courses and studied and passed the California State Broker's Exam.⁴ Since his first petition was denied in 2007, petitioner has been teaching business law and international law class at Berkeley City College. In addition to teaching a course in business law at Berkeley City College, petitioner also taught a business law class at Laney College in the spring of 2008. The subject matter of the two business law courses include business law as it relates to torts, real property, constitutional law, corporations and securities law. The preparation and teaching time totaled 172.5 hours. (Exh. C, pp. 45-60.)

Since the 2007 proceeding, petitioner also has completed an additional five hours of MCLE courses, including three hours of legal ethics.

Based upon the record as a whole, the court finds that petitioner has demonstrated by a preponderance of the evidence that he possesses present learning and ability in the general law, and so meets the requirement of this prong of standard 1.4(c)(ii) .

IV. Discussion

In order to be relieved of his actual suspension, petitioner has the burden of proving in this proceeding, by a preponderance of the evidence, that he is rehabilitated, has present fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, rule 634; *In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 578.)

⁴The two real estate classes were 45 hours courses. Petitioner itemized the hours and dates of study at exhibit C, pages 42-44. See also exhibit A.

To establish rehabilitation, the court must first consider the prior misconduct from which petitioner seeks to show rehabilitation. The amount of rehabilitation evidence varies according to the seriousness of the misconduct at issue. Second, the court must examine petitioner's actions since the imposition of his discipline to determine whether his actions in light of the prior misconduct, sufficiently demonstrate rehabilitation by a preponderance of the evidence. (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

Petitioner must show: (1) strict compliance with the terms of probation in the underlying disciplinary matter; (2) exemplary conduct from the time of the imposition of the prior discipline; and (3) "the conduct evidencing rehabilitation is such that the court may make a determination that the conduct leading to the discipline . . . is not likely to be repeated." (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

"In weighing such a determination, the court should look to the nature of the underlying offense, or offenses; any aggravation, other misconduct or mitigation that may have been considered; and any evidence adduced that bears on whether the cause or causes of such misconduct have been eliminated." (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

A. Petitioner's Rehabilitation and Present Fitness to Practice Law

As to whether petitioner has sufficiently demonstrated, by a preponderance of the evidence, his rehabilitation and present fitness to practice law, the court must first consider petitioner's prior misconduct, the aggravating and mitigating circumstances surrounding said misconduct and any other circumstances of misconduct.

Petitioner's prior misconduct involved repeated failure to provide legal services with competence and misappropriation of client funds of almost \$49,500. In aggravation, petitioner committed trust violations and multiple acts of wrongdoing. In mitigation, petitioner had no prior record of discipline, displayed candor and cooperation, was remorseful, paid full restitution, and suffered from severe financial stress and extreme difficulties in his personal life. Additionally, petitioner's failure to strictly comply with the terms of his probation prior to his filing his

December 27, 2006 petition for relief from actual reinstatement, as well as his failure to be forthright about his suspension from the practice of law, are directly related to rehabilitation and present fitness to practice law.

In its May 25, 2007 decision, the court recognized that petitioner had remorse for his misappropriation and made full restitution. This court has since had the opportunity to view and hear petitioner testify in the instant proceeding, and concludes that petitioner continues to be remorseful for his past misconduct. Additionally, since the filing of the court's May 25, 2007 decision, petitioner has submitted timely quarterly reports to the Office of Probation as required by the terms of his probation, thereby demonstrating that he has the ability to meet deadlines and recognizes the importance of meeting deadlines. Since the filing of the 2007 decision, not only has petitioner shown a commitment to strictly complying with his probation requirements, but he has shown that he is committed to meeting deadlines in both his personal and professional life. He is strict in meeting deadlines related to the work he does on behalf of his church and community and his work as a teacher of business law.

Thus, the court concludes that petitioner demonstrates remorse for his misconduct, as evidenced by his initial stipulation to misconduct and his subsequent commitment to comply with all of his probation requirements. The remaining issue is whether he has shown rehabilitation and whether the conduct leading to his discipline is "not likely to be repeated."

The State Bar argues that petitioner is likely to engage in the conduct leading to his discipline because he continues to live beyond his means, as evidenced by his recent bankruptcy petition and because the same financial pressures that precipitated his misconduct still exist. On the other hand, petitioner argues that he no longer lives beyond his means. He contends that the severe financial and personal problems that caused him to commit misconduct and caused his subsequent failure to strictly comply with the conditions of his probation no longer exist. Petitioner also states that as a member of the board of directors of the nonprofit corporation of his church, he has on-line access to its bank accounts and has remained steadfast in the proper handling of those accounts.

The court finds petitioner to be credible and finds his position well-substantiated. At the time of the underlying misconduct, petitioner suffered from financial stress and extreme difficulties in his personal life. Not only had he lost his family residence in the Oakland hills fire, but he had to confront the issues of rebuilding from the ground up. Lawyers left his law firm, leaving petitioner with fixed expenses created during better economic times. When petitioner untimely filed quarterly probation reports, he was dealing with further emotional turmoil, resulting from the unexpected death of his father and the dissolution of his 18 year marriage. The family home was lost in foreclosure, which was also a source of stress.

The result of the loss of the family home, however, was to remove it as a financial drain. Petitioner has since learned to live on a reduced income. He has come to terms with his father's death, and his marital and familial stress has been resolved. Therefore, many of the circumstances that caused petitioner's misconduct and non-compliance with the terms of his probation no longer exist. Moreover, the evidence demonstrates that petitioner has undergone massive introspection and a reevaluation of his values.

As discussed, *ante*, petitioner presented strong evidence of good character through the testimony of his pastor, and the nine favorable reference letters from attorneys, judges, a pastor, and a friend, all of whom believed in his fitness and moral character. (See exhibit B.) Favorable reference letters from attorneys and judges are entitled to considerable weight. (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.) The letters introduced in support of the October 28, 2008 petition show that petitioner has been open and forthright in providing those who submitted character references on his behalf with a full understanding of the nature and scope of his prior misconduct, as well as the reasons for the denial of his December 27, 2006 petition. All of those who submitted letters of reference strongly support petitioner's request for relief from suspension. Those who wrote the reference letters believe that petitioner expresses sincere remorse for his misconduct, including his inattentiveness to probation conditions. They believe that petitioner is committed to avoiding any misconduct in the future. Petitioner's pastor testified to his complete trust in petitioner, stating that he would hire petitioner as the legal counsel to the church if

petitioner is allowed to return to practice. Moreover, the evidence elicited from the pastor and petitioner make clear that petitioner, who has had access to the church's bank accounts, has not misappropriated or attempted to misappropriate funds from the church.

Consistent with his introspection and commitment to his new values, petitioner has worked to serve his community, including youths, seniors, the poor, and those recently released from prison. As a deacon in his church, petitioner calls on the sick. He also sits on the Board of Directors of the Allen Temple Housing and Economic Development Corporation, the Allen Temple Development Corporation #2, Allen Temple Arms III and IV. These five corporations serve the elderly and disabled with housing and provide re-entry services to ex-offenders. Petitioner's "[p]ost misconduct pro bono work and community service are factors evidencing rehabilitation and present moral qualifications." (See *In the Matter of Miller*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 430.)

After carefully reviewing and weighing all the evidence and taking into account petitioner's demeanor at the hearing in this proceeding, the court finds that petitioner has adequately addressed the shortcomings of his prior petition and has shown by a preponderance of the evidence that he is rehabilitated and has the fitness to practice law.

In particular, petitioner has demonstrated an understanding and insight into the nature and scope of his past misconduct. He has accepted responsibility for all prior acts of misconduct and has expressed remorse for his behavior. Additionally, unlike in the previous proceeding, petitioner has talked openly with friends and colleagues about the mistakes of the past, including his failure to strictly comply with his probation conditions. He has established a strong support system through his church, and has vowed to avoid similar misconduct in the future. The fact that petitioner understands his professional responsibilities and has a proper attitude towards his prior misconduct is evidence of rehabilitation. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 317.)

Accordingly, the court finds, by a preponderance of the evidence, that petitioner is rehabilitated such that the misconduct in the underlying matter is unlikely to recur. Based on the

foregoing, the court concludes that petitioner has shown: (1) strict compliance with his probation conditions since the denial of his first petition; (2) exemplary conduct since the denial of his first petition; and (3) that the conduct leading to the prior discipline is not likely to be repeated.

B. Petitioner's Present Learning and Ability in the Law

In his December 27, 2006 petition, petitioner declared that he had completed more than 300 hours of self-taught study in preparation to teach business law as it relates to tort, contract, and real estate law. However, no evidence was submitted as to the nature and extent of the self-taught studies undertaken, when they were completed, or how many hours of study were spent on each subject. In the instant proceeding, however, petitioner has presented documentation for all his many hours of preparation for the business law and international law classes he taught. Additionally, petitioner passed the California State Broker's exam. (Exhs. C, D, E, & F)

Therefore, based upon evidence presented in this proceeding and upon the findings of fact set forth above, this court concludes, by a preponderance of the evidence, that petitioner has present learning and ability in the general law.

V. Conclusion

The court finds that petitioner has satisfied the requirements of standard 1.4(c)(ii) and that he has demonstrated, by a preponderance of the evidence and to the satisfaction of this court, that he is rehabilitated, that he is presently fit to practice law, and that he has present learning and ability in the general law.

Accordingly, petitioner's petition for relief from actual suspension from the practice of law pursuant to standard 1.4(c)(ii) is hereby **GRANTED**.

Dated: March , 2009

PAT McELROY
Judge of the State Bar Court